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August 14, 2006

Robin Heard Director, Easement Program Division Natural Resources Conservation Service P.O. Box 2890 Washington, DC 20013-2890

VIA EMAIL AND FAX

Re: Healthy Forests Reserve Program Interim Final Rule, 7 CFR Part 625

Dear Ms. Heard:

Thank you for the opportunity to comment on the Interim Rule implementing the Healthy Forests Reserve Program (Title V of the Healthy Forests Restoration Act), published in the Federal Registry on May 17, 2006. The Nature Conservancy is pleased to offer our support for the agency's effort, and we would like to suggest some targeted changes to the proposed directive.

The Nature Conservancy is an international, nonprofit organization dedicated to the conservation of biological diversity. Our mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. Our on-the-ground conservation work is carried out in all 50 states and in 27 foreign countries and is supported by approximately one million individual members. We have helped conserve nearly 15 million acres of land in the United States and Canada by working in partnership with private landowners, businesses, like-minded organizations and state and federal governments.

The Conservancy works closely with the Natural Resources Conservation Service (NRCS) to implement conservation easement programs across the country. We are currently involved as an applicant in two of the three pilot states for 2006, Arkansas and Maine. In Maine, NRCS has determined that the best approach for the 2006 pilot is to seek proposals from landowners who are interested in cost-share practices that would allow them to incorporate Canada lynx management into forest plans. Accordingly, The Nature Conservancy has submitted an application to enroll 153,000 acres along the Upper St. John River in a 10-year cost-share agreement. In Arkansas, the Conservancy has submitted a 99-year easement application for Red-Cockaded Woodpecker habitat in southeastern Arkansas.

We have comments on the following sections of the HFRP Interim Rule, including those sections on which NRCS asked for specific responses.

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#### I. Easements

- a. Negative Restricted Easements vs. Reserved Interest Deeds (Section 625.4).
- NRCS requests comments on the form of the easement. The Conservancy strongly believes that the program should use the more typical conservation easement -- the negative restricted easement -- which sets out specific negative restrictions and then allows the landowner to retain all other rights. The reserved interest easements are less familiar to landowners and more confusing, and they could be more expensive for the government to acquire, thus allowing fewer acres to be enrolled.
- **b. Term of Easements.** The Conservancy recognizes the value of term easements as stipulated in the current rule, but would prefer that the program enable permanent easements as a means to ensure true long-term protection of critical habitats. If the program cannot allow for permanent easements directly, we recommend that the rule allow for the possibility of supplementing the program to enable the possible extension of some easements to permanency. We believe the program could be greatly improved by recognizing that many willing landowners wish to engage in permanent easements, and that funds from other sources (private or appropriate non-conflicting public funds) are allowable to supplement this program to enable permanent easement protection of these lands.
- **c.** Compatible use process (Section 625.11). We support the requirement that easements permit compatible uses, but the rule suggests that NRCS must constantly evaluate whether an activity is compatible, which may not be feasible with current resources. However, if the NRCS uses the restrictive easement as suggested above then the easement will allow for uses that have not been specifically restricted. This is a well-tested approach and should suffice.

#### II. Cost share and Restoration Plans

- **a.** Use of average cost approach. NRCS requests comments on average vs. actual cost approach for practices. While we acknowledge that there may be added administrative costs and other difficulties associated with the actual cost approach, in general the Conservancy prefers the actual cost approach. We have found that in some geographies the average cost may be far lower than the actual costs of some practices, thus making full program implementation less likely in those places if landowners are not repaid for their full expenses.
- **b. List of eligible practices (Section 625.12).** The process for approving practices from a "list of eligible practices" (section 625.12(c)) is not clear. For example, the practices necessary to improve rare species habitat are often unique to individual species, and their application may not be readily familiar to most landowners. Expert technical guidance will be critical. Any narrowly defined list of practices could be too vague or too short to ensure that appropriate practices based on expert guidance will be eligible. We suggest that any list of eligible practices be sufficiently flexible to allow for the full expanse of appropriate practices, and further recognize that expert technical assistance can come from a variety of qualified sources, including NatureServe, The Nature Conservancy, State Heritage Agencies, and other organizations, provided that they are approved by FWS and NRCS.

### **III. Enrollment and Application Process**

a. Enrollment Priority (Section 625.6). We applaud the agency for giving priority to the enrollment of land that is capable of supporting the forest ecosystem conditions that will provide the greatest conservation benefit and for emphasizing the need to restore our nation's private forests to improve biological diversity. All too often, existing USDA conservation programs are not structured or implemented in a manner that effectively addresses critical resource concerns on a landscape or regional scale. We believe that the cumulative ecological outcome of the millions of dollars invested in conservation would be much more substantial and lasting if these dollars were targeted based on ecological priorities.

With the exception of the Conservation Reserve Program, most conservation program funds are allocated to individual states, which in turn determine where the funding is spent. The state-based approach has many positive attributes (most notably its ability to respond to localized concerns), but such an approach also poses challenges when there is a need to address ecological concerns across political boundaries. Effective watershed management, for example, must often cross political boundaries. Presently, there are not nearly enough resources available to spread them evenly across the country and still have meaningful impacts in high priority areas and landscapes.

The HFRP program and our nation's private forestlands will be best-served by allowing NRCS the ability to target program funds to generate the greatest landscape scale ecological benefit per dollar spent. Focus should be on ensuring that the most important ecological areas remain intact and functional, through the identification of critical areas consistent with credible regional biodiversity assessments and known locations of rare species. States should also be directed to use regional biodiversity assessments (government or NGO) or state wildlife conservation strategies and plans as primary guidance to target HFRP funding to priority areas.

**b.** Application Ranking (Section 625.5). Section 625.5 (d) suggests that landowners could improve their ranking by agreeing to a lower payment. While we understand the value of this provision, the agency should ensure that inherently lower ranked properties do not take precedence over higher ranked properties simply because they cost less. We suggest that such adjustments only be made as exceptions, and for properties that are clearly important for the purposes of the statute.

We also recommend that the agency ensure that carbon sequestration projects do not take precedence over biodiversity protection projects. The program should not encourage the planting and management of non-native or monoculture forest types that are high in carbon sequestration rates at the expense of more natural systems that are consistent with the statutory purpose. Carbon sequestration should have a value as an additional consideration for project ranking, but only after initial consideration is taken of the fundamental biodiversity values.

In addition, it will be important to ensure that the national and state ranking processes work well together. National ranking and priorities should establish guiding parameters of the program and various decision-making criteria, and state priorities should be the main drivers regarding particular places on the ground or habitats that should be protected to meet national goals. States should also be directed to use regional biodiversity assessments (government or NGO) or state wildlife conservation strategies and plans as guidance to target HFRP funding to

priority areas and in application selection. In addition, we believe those applications that include funding, conservation priorities, or some other coordination with non-profit conservation agencies should receive higher priority in application selection.

**c. Application sign-up timeline and offering.** While application sign-up periods often vary for different USDA programs, we do not believe that a one-time opportunity to sign up is sufficient to educate and involve potential forest landowners. We recognize that the geographic scope of the program may depend heavily on available funding (for example, the Conservation Security Program has limited available funds, and therefore only selects a handful of specified watersheds for sign up in a single year), but we do not feel that this is the best method for maximizing landscape scale participation and the conservation benefits of the program.

The ability to educate landowners about this program is extremely important, since many forest landowners may not previously have been NRCS customers. We would encourage the agency to maintain a continuous enrollment process for HFRP across the country, thus allowing the workload to be spread out over the year and not forcing any undue burden on applicants to meet tight deadlines. If eligible areas are to be prioritized or rotated on some time basis, we would prefer to see longer sign-up periods as well as announcements and marketing of the program ahead of time to mitigate landowner education hurdles and NRCS workload challenges.

**d.** Consultation with others on priorities (Sections 625.2, 625.6). The preamble (p. 28550) notes that NRCS may consult with other agencies, conservation organizations, and others to establish priorities. We recommend that NRCS clarify this provision, to indicate how conservation organizations and others can constructively participate.

## IV. Habitat for candidate and state-listed species (Section 625.6)

We believe that the program is significantly strengthened by allowing the enrollment of lands that provide habitat for "candidate" species or "state-listed" species. Candidate and state-listed species are often as important as federally-listed species. We note that some states do not have state listing systems, so we recommend that NRCS also accept other types of supporting evidence for the importance of individual species in those states; specifically, we suggest allowing for enrollment of lands providing habitat for G1- G2 species recognized by NatureServe. Additionally, as has been done in other NRCS programs, we recommend a process for applicants to request inclusion of other species or habitats that might be deemed critical at the state level; this is particularly important in states that lack a formal state listing system. NRCS should also encourage the use of and reference to state wildlife conservation strategies.

# V. Eligibility of lands that "improve biodiversity" (Section 625.6)

We commend the agency for including this provision, and recommend that the Ecoregional Assessments developed by The Nature Conservancy and NatureServe, or other similarly credible scientific assessments, be referenced as a means of providing guidance for the selection of lands that meet the goal of biodiversity enhancement.

Focusing on Endangered Species Act listed or candidate species with an emphasis on managing for the forest ecosystem, rather than single species management, is in accordance with biodiversity protection goals for forest habitats. We assume that aquatic species such as salmon

would also be included as species that benefit from appropriate forestland management. For example, the USFWS under its ESA Section 6 grant program has funded land acquisition projects that support the protection of riparian corridors, thus fostering the protection of Atlantic salmon habitat. We encourage the agency to target the protection of forested watersheds to maintain habitat for aquatic species, or spawning grounds for anadromous fish as well as terrestrial species.

In conclusion, we believe the Healthy Forest Reserve Program may provide many opportunities for our nation's private forest landowners to protect and restore important forest ecosystems and improve biodiversity. We encourage USDA to address our concerns and suggested changes for the program so that the success and effectiveness of the program are maximized. Thank you again for the opportunity to comment. If you have any questions, please contact the following staff at The Nature Conservancy: Louise Milkman at 703-247-3675 or Adrienne Wojciechowski at 703-841-5376.

Sincerely,

Jimmie R. Powell

**Director of Government Relations**